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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|----------------------------------|-------------|----------------------|---------------------|------------------|
| 10/066,990 | 02/04/2002 | James J. Kobe | 57148US002 | 4190 |
| 32692 | 7590 | 02/17/2004 | EXAMINER | |
| 3M INNOVATIVE PROPERTIES COMPANY | | | VO, HAI | |
| PO BOX 33427 | | | ART UNIT | |
| ST. PAUL, MN 55133-3427 | | | PAPER NUMBER | |
| | | | 1771 | |

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------|-------------------------------|-----------------------------|
| Advisory Action | Application No. 10/066,990 | Applicant(s) KOBE ET AL. |
| | Examiner Hai Vo | Art Unit 1771 |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended:

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 2, 4-15, and 23.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: The art rejections over Gehlsen et al (US 6,103,152) in view of Parsons et al (US 5,851,663) have been maintained for the following reasons. Applicants argue that Gehlsen does not teach or suggest the specific inclusion of antimony-free fire retardant in the foam layer in combination with an adhesive layer formulated without fire retardant. Applicants go on stating that Gehlsen provides no motivation to those skilled in the art to add specific fire retardant such as antimony-free fire retardant to the foam article in combination with an adhesive layer formulated without fire retardant. The arguments are not found persuasive. In the first place, Gehlsen does suggest the use of the fire retardant in the foam layer while formulating a skin adhesive without fire retardant for use in combination with the fire retardant foams (examples 1-5, column 14, line 45-60). Parsons, however, teaches an adhesive foam tape comprising an antimony-free fire retardant in an amount of 10 to 60% by weight within the claimed range, to achieve a flameproof effect and environmental safety, which is important to the expectation of successfully practicing the invention of Gehlsen, thus suggesting the modification. It appears that the article of Gehlsen comprises all the elements as recited in the claims. The foam layer comprises a plurality of expanded polymeric microspheres that include a polymer shell and a core material in the form of a gas, liquid or combination thereof. The core material is propane, butane, pentane. The article of Gehlsen further comprises an adhesive layer formulated without fire retardant and disposed on at least a portion of one of the surfaces of the foam layer. The combination of Gehlsen with Parsons would arrive at the article of the present invention and the examiner believes that passing one or more flammability tests recited by the claims would be inherently present because it seems from the claim, if one meets the structure recited, the properties must be met or Applicant's claim is incomplete (Note discussion found in Ex parte Slob, 157 USPQ 172).


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